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JOSEPH F. SPANIOLO, JR.
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In The
Supreme Court of the United States
October Term, 1986

SHELL OIL COMPANY, a Delaware corporation,
Petitioner,

v.

PIAMCO, INC., an Illinois corporation,
Respondent.

**BRIEF IN OPPOSITION TO PETITION FOR
A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

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STATEMENT OF THE CASE

Shell Oil Company ("Shell") and Piamco, Inc. ("Piamco") entered into a Coal Reserve and Royalty Agreement dated October 24, 1974 ("Agreement"), portions of which are reprinted in Shell's Appendix to its Petition For a Writ of Certiorari (App. 28a). By the

* In response to Supreme Court Rule 28.1, Piamco, Inc. does not have a parent corporation, subsidiaries or affiliates.

terms of the Agreement, which is governed by Illinois law, Piamco reserved to itself certain royalty interests in the leased acreage which included advance and minimum royalties of \$4.00 per acre/per year. Piamco acquired and transferred to Shell leases for coal acreage covering 107,740 acres. (Appendix to Petition for Certiorari at 3a). On January 30, 1984, Shell released its rights to 42,845 acres transferred to Shell by Piamco and subsequently disclaimed any liability for advance and minimum royalties on the property. (Appendix to Petition for Certiorari at 3a).

Piamco brought an action against Shell seeking payment of the overdue advance and minimum royalties on the released acreage and a declaration of its right to payment of such royalties for the balance of the term of the Agreement. The District Court granted Piamco's motion for judgment on the pleadings and denied Shell's motion for summary judgment. In a unanimous decision, the United States Court of Appeals for the Seventh Circuit affirmed the District Court. Shell's petition for rehearing with a suggestion for rehearing en banc was denied.

Jurisdiction in the District Court was invoked pursuant to 28 U.S.C. §1332, diversity of citizenship.

ARGUMENT

Shell presents two state law issues for review in its Petition for a Writ of Certiorari filed in this diversity case. Neither issue correctly characterizes the Seventh Circuit's holdings. Even if correctly stated, the issues presented are purely questions of the interpretation of Illinois law and there are no special or important reasons why certiorari should be granted in this case. United States Supreme Court Rule 17.

Shell's first issue is based on an assumption that the Seventh Circuit found that the subject Agreement was ambiguous and refused to construe that ambiguity against the plaintiff. This assumption is incorrect and ignores the holding of the Seventh Circuit. The Seventh Circuit held,

after reviewing the entire Agreement, that "[c]onstrued as a whole, the contract *unambiguously* manifests an intent to bind Shell to make advance and minimum royalty payments even if it later relinquished its rights to a part of the acreage." (Appendix to Petition For a Writ of Certiorari 5a) (Emphasis supplied).

The Seventh Circuit did not refuse to construe an ambiguity in the contract against its alleged drafter, since the Seventh Circuit did *not* find the contract ambiguous. The quotation on which Shell's argument is based, moreover, is incomplete. The full quotation is as follows:

Assuming, arguendo, that the document was, in fact, drafted by Piamco we nevertheless do not believe it is legally ambiguous and that we must punish its drafter. When read in conjunction with the contract as a whole, Section 7.02 is fully consistent with our view that Shell remained obligated to pay Piamco advance and minimum royalties. Moreover, assuming, arguendo, that the agreement contains some minor ambiguities Shell is hardly a party that needs our special protection. Shell is one of the world's leading energy producers. Surely, Shell is a sophisticated enough consumer of energy related services to protect itself against an ambiguous contract.

Third, in the alternative, Shell argues that Section 7.02, instead of being ambiguous, quite clearly permits the unilateral termination of its royalty obligations. At the risk of repeating ourselves, we believe the contract as a whole establishes the contrary.

(Appendix to Petition For a Writ of Certiorari at 5a) (Emphasis supplied). The Seventh Circuit did not find the contract ambiguous and thus the rule which Shell invokes to support its position does not apply.

Shell's second issue is premised on an assumption that the Seventh Circuit's decision, applying Illinois law to a contract, conflicts with other decisions in other diversity cases applying the law of other states to other contracts.

(Petition For a Writ of Certiorari at 4 n.*). There is no conflict. None of those cases involved a contract similar to the one applied to the facts in this case. Even if such a conflict is assumed, *arguendo*, the conflict would be between the law of Illinois and the law of other states. At least since the days of *Erie Railroad Company v. Tompkins*, 304 U.S. 64 (1938), the United States Supreme Court has recognized that the states are free to develop their law independently.

As the Seventh Circuit correctly held, "construed as a whole, the contract unambiguously manifests an intent to bind Shell to make advance and minimum royalty payments even if it later relinquished its rights to a part of the acreage. The advance and minimum royalty payments constitute a part of the purchase price of the rights and not a bonus dependent on Shell's exercise of the rights secured from Piamco." (Appendix to Petition For a Writ of Certiorari at 5a). This is a matter of state law and not a matter requiring this Court's review.

CONCLUSION

For the foregoing reasons, Piamco respectfully requests that the Petition For a Writ of Certiorari be denied.

Respectfully submitted,

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